IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO.4660 OF 1994

Mrs. Rama S. Sharma Petitioner

Vs.

Principal, R.K. Talreja College, Ulhasnagar & ors. Respondents

Mrs. N.Bhagwat for Petitioner.
Respondent No.1 in-person.
Mr. V.S. Gokhale, A.G.P. for Respondent Nos.3 to 5.

**CORAM : B. H. MARLAPALLE & D. B. BHOSALE,JJ.**

**Date : March 23, 2006.**

**ORAL JUDGMENT (PER B.H.MARLAPALLE,J.):**

1. The short issue raised by the Petitioner in this Petition filed under Article 226 of the Constitution is whether she is entitled to receive Senior College Pay Scale of Rs.2,500 - 4,000/- from July 1989 instead of June 1991.

2. The Petitioner came to be appointed as a lecturer in the R.K. Talareja Jr. College run by the Respondent No.2 society on 1/7/1977, after she had acquired the qualification of M.A. (Economics) + B.Ed., by the appointment order dated 29/6/1977, on a substantive full time vacant post. In 1979 a vacancy arose for the post of lecturer in Economics in the Senior College run by the Respondent No.2 society and the petitioner applied for the same. She went through the selection process and came to be appointed as a

lecturer in the Senior College in a substantive vacant post from 20/6/1979 as per the appointment order dated 16/6/1979. She continued as a lecturer in the Senior College from 20/6/1979 till the end of the academic year 1980-1981. On 12/6/1981, the Respondent No.1 issued an order of transfer whereby the petitioner came to be transferred from Senior College to the Junior College from 20/6/1981. Thus she worked as a lecturer of Economics in the Senior College from 20/6/1979 to 19/6/1981.

3. On 1/10/1981, she submitted a representation to the Respondent No.1 that her basic salary ought to have been fixed at Rs.580/- in the pay scale of Rs.500-900, instead of at Rs.500/-, by taking into consideration her service of 4 years i.e. from July 1977 to June 1981. Almost 6 years later i.e. on 26/11/1987, she reminded the Respondent No.1 by a fresh representation to consider her four years' continuous service for the pay fixation and not to treat her service in the Senior College for the period of two years as a break in service. On 16/10/1989, she submitted her 3rd representation praying for confirmation as a lecturer in Junior College with effect from 1/7/1977 without any break and it was followed by another representation dated 26/10/1989 to the Deputy Director of Education at Nashik followed by

reminder dated 16/9/1992. It is also clear that the petitioner came to be granted revised Senior Pay Scale (Rs.2,500-4,000/-) fixed for the lecturer in Junior College with effect from June 1991 as per the Government Resolution dated 16/10/1992. The petitioner's limited grievance in this petition is that she is entitled to receive the revised Senior pay scale from 1/7/1989 instead of June 1991. The Learned Counsel for the Petitioner in her exhaustive arguments advanced before us submitted that:

(a) The petitioner was transferred from the Junior College to the Senior College by the Respondent No.1 from 1/7/1979 and it was not a fresh appointment as a lecturer in the Senior College with effect from 1/7/1979. Under the revised integrated scheme of 10+2+3 adopted with effect from 1/1/1973 and vide the State Government Resolution dated 4/10/1975, the petitioner was transferred for the convenience of the Respondent Nos.1 and 2 from the Junior College to the Senior College and to save the additional cost that would be incurred by appointing a lecturer in the Senior College;

(b) The petitioner did not apply for re-transfer and the Respondent No.1 after being satisfied that there was reduction in workload as a consequence of 10+2+3

pattern of educations and revision of prescribed qualification for Senior College which the petitioner did not possess, the Respondent No.1 transferred her to the Junior College with effect from 20/6/1981 vide the order dated 12/6/1981;

(c) There was no break in service and under the same College run by the Respondent No.2, she worked for 4 years without break in service and therefore her seniority as a Junior College lecturer was required to be counted from 1/7/1977 and not from June 1981 and;

(d) Consequently the petitioner would be entitled for revised Senior scale of pay of Rs.2,500-4,000/- from 1/7/1989 and not from June 1991.

4. In support of these contentions the Ld. Counsel for the petitioner relied upon the Government Resolutions dated 11/6/1976, 14/7/1976, 7/7/1977, 25/10/1977 and 7/6/1980, as well as 14/3/1980. In addition she has placed reliance on the decision of this Court in the case of Prof. Pervez Lentin Vs. The Principal, St. Xavier's College and Ors. (Original Side W.P. No.2903 of 1989 decided on 17/2/2005).

5. We have perused all the Resolutions referred

to hereinabove and relied on by the Ld. Counsel for the petitioner and considered the decision of this Court in Prof. Lentin's case. None of them are applicable to the petitioner. The Respondent No.1 appeared as Party-in-person and submitted that on the application made by the petitioner she was appointed as a lecturer in the Senior College from June 1979 and she was transferred to the Junior College in June 1981 at her request and mainly because she did not possess the requisite qualification for the post of lecturer in Senior College in as much as she did not have the MA degree with B+, though she had obtained the said degree in Second Class and therefore her continuation in the Senior College as a lecturer was uncertain and against the eligibility criteria prescribed by the University Grant Commission. He further pointed out that the lecturer in Junior College and lecturer in Senior College cannot be inter changeable unless they possess a requisite qualification and in any case the service conditions of the lecturer in Junior College are governed under the M.E.P.S. Act 1977 and M.E.P.S. Rules 1981. Whereas the service conditions of the lecturer in Senior Colleges are governed by the Rules prescribed by the University Grants Commission and adopted by the State Government. For the lecturer in the Senior College, the approval is granted by the University whereas for the appointment of a lecturer

in Junior College the approval is granted by the Deputy Director of Education. In addition the educational qualifications for the post of lecturer in Junior College prescribed under the M.E.P.S. Rules 1981 are M.A. Second Class + B.Ed. and as against this for the post of lecturer in the Senior College the basic qualification required is M.A., Second Class with B+ i.e. 55% and more marks to be obtained while passing the M.A. degree + M.Phil or a Ph.D.

6. The respondent No.3 has also filed affidavit in reply and opposed the petition by reiterating that the petitioner's service in the Senior College from 20/6/1979 to 19/6/1981 would be a break in service and notwithstanding the same the said service in the Senior College for 2 years has been taken into consideration while giving her the benefit of the revised Senior pay scale. It has been made clear that for the benefit of revised Senior pay scale strictly speaking the petitioner's service in the Junior College could have been counted from 20/6/1981 for the benefit of the Government Resolution dated 16/10/1992. It has been reiterated that granting of the revised Senior scale to the petitioner from June 1991 is in keeping with the rules and she cannot be granted the said benefit from July 1989.

7. There is no dispute that at the relevant time the pay scale for the post of lecturer in Junior College was Rs.500-900 and for the post of lecturer in the Senior College the pay scale was Rs.700-1600. The qualifications for the respective posts as stated by the Principal and as reiterated in the affidavit in reply filed by the Respondent No.3 are also not disputed by the petitioner. She also admits that she did not possess the qualifications i.e. M.A. Second Class with B+, for the appointment of the lecturer in the Senior College from June 1979. It is also admitted that while she worked in the Junior College from 1/7/1977 to 19/6/1979 she was drawing her salary in the pay scale of Rs.500-900 and while she worked as a lecturer in the Senior College from 20/6/1979 to 19/6/1981, she was drawing her salary in the pay scale of Rs.700-1600. If the petitioner had possessed the qualifications of M.A., Second Class with B+, she could have been transferred from the Junior College to the Senior College without any fresh appointment and would have been eligible for the pay scale accordingly at the relevant time and as per the Resolutions relied upon. While on transfer to the Senior College or in case she was initially appointed as a lecturer in the Senior College she could not have been transferred to the Junior College without loss in her salary as per the Government Resolutions relied upon by the

petitioner and which governed the integrated educational scheme of 10+2+3. In the case of Prof. Lentin, this Court noted that he possessed the requisite qualifications for his appointment as a lecturer in the Senior College and therefore his transfer to the Junior College could not be treated to be break in service and he was held to be eligible for the pay scale of Rs.700-1600 even while on transfer to the Junior College and would be entitled for the benefit of seniority right from his initial date of appointment. Therefore the decision of this Court in Lentin's case is not applicable to the petitioner.

8. We have also noted from the record that the petitioner had come before us by changing her stand by way of afterthought. It was never her case before she submitted her representation on 26/11/1987 that she was transferred from Junior College to Senior College by the Respondent Nos.1 and 2 on their own account and on account of the shortage of lecturers in the Senior College. The appointment order dated 16/6/1979 for the post of lecturer in Economics in the Senior College equally states that the same was in response to her application and the petitioner herself has averred in the petition that she was interviewed and appointed to the post of lecturer in Economics in the Senior College in a substantive vacancy with effect

from 20/6/1979. Similarly the transfer order dated 12/6/1981 clearly speaks that it was on account of the application submitted by the petitioner for her transfer to the Junior College. Her representation dated 1/10/1981 addressed to the Respondent No.1 opens with the following words ; " In view of the fact that I did not possess the requisite qualifications (B+ grade) for the post in the Degree College, I opted for my transfer from the Degree College from the Junior College". The theory of transfer from the Junior College to the Senior College was advanced by the petitioner for the first time in her representation dated 20/6/1987 i.e. after about 6 years from her re-absorption as a lecturer in the Junior College. It is clear that the petitioner was aware about her ineligibility to continue as a lecturer in the Senior College unless she reappeared for the M.A. examination to improve her grade and therefore she applied to the management for her reabsorption as a lecturer in the Junior College and the management obliged her.

9. The Government Resolution dated 16/10/1992 under which the petitioner claims the revised Senior scale of pay set out the following conditions for eligibility: (a) the Junior College teachers are allowed to receive Senior scale with effect from

1/1/1986, (b) they ought to have put into 12 years service (Post-graduation with B.Ed. in Higher Secondary Jr. College), (c) the work of the concerned teacher should be satisfactory, and (d) the concerned teacher should undertake the in-service training as and when prescribed by the Government.

10. As noted earlier while in the Junior College the petitioner received her pay in the scale of Rs.500-900 and on her appointment in the Senior College she received pay in the scale of Rs.700-1600 and on her retransfer to the Junior College she was re-fixed in the pay scale of Rs.500-900. There was break in service from 20/6/1979 to 19/6/1981 and if her service in the Senior College was counted since 1981 she would complete 12 years service in the Junior College in June 1993 and would be eligible in the revised pay scale of Rs.2,500-4,000/- only from that date. However, the Respondent No.3 has given weightage for her earlier service in the Junior College i.e. 1/7/1977 to 19/6/1979 and granted her the revised Senior pay scale from June 1991. There could not have been any better favour to the petitioner and the Respondent No.3 has taken a practical view rather than acting hyper technically treating the service of 12 years from the date of joining on re-transfer to the Junior College. He

considered her total service as a lecturer in the Junior College run by the Respondent Nos.1 and 2. As noted earlier if the petitioner had possessed M.A. Second Class with B+ grade, there could not have been any break in service and only in that case she would have been eligible to receive a revised Senior pay scale from July 1989 as contended by her. Even otherwise also, as per the resolutions relied upon by her, the transfer from the Senior College to the Junior College was permisible and her continuous service could be counted from June 1979 when she was appointed in the Senior College. Twelve years continuous service could be completed in June 1991 only. viewed either way the decision of Respondent No.3 can not be faulted as being illegal.

11. In the premises the petition fails and we uphold the contention of Respondent No.3 that the petitioner has been rightly granted the revised Senior scale of pay with effect from June 1991 and she cannot be granted the same from July 1989. The petition is hereby dismissed.

12. Rule discharged with no order as to costs.

**(D.B. Bhosale,J.)** **(B.H. Marlapalle, J.)**